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8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. R-2002

12 RANDALL J. NAJERA
4224 W. Paul
13 Fresno, CA 93722

A C C U S A T I O N

14 Respiratory Care Practitioner License No. 18352

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Respiratory Care Board of California, Department of
21 Consumer Affairs.

22 2. On or about November 9, 1995, the Respiratory Care Board issued
23 Respiratory Care Practitioner License Number 18352 to Randall J. Najera (Respondent). The
24 Respiratory Care Practitioner License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on June 30, 2007, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Respiratory Care Board (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section references are

1 to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
4 the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications, functions,
12 or duties of a respiratory care practitioner. The record of conviction or a certified copy
13 thereof shall be conclusive evidence of the conviction.

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2 (commencing
18 with Section 500).

19 7. Section 3752 of the Code states:

20 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
21 made to a charge of any offense which substantially relates to the qualifications, functions,
22 or duties of a respiratory care practitioner is deemed to be a conviction within the meaning
23 of this article. The board shall order the license suspended or revoked, or may decline to
24 issue a license, when the time for appeal has elapsed, or the judgment of conviction has
25 been affirmed on appeal or when an order granting probation is made suspending the
26 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
27 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
28 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or

1 indictment.”

2 8. Section 3752.5 of the Code states:

3 “For purposes of Division 1.5 (commencing with Section 475), and this chapter
4 [the Respiratory Care Practice Act], a crime involving bodily injury or attempted bodily
5 injury shall be considered a crime substantially related to the qualifications, functions, or
6 duties of a respiratory care practitioner.”

7 9. California Code of Regulations, title 16, section 1399.370, states:

8 “For the purposes of denial, suspension, or revocation of a license, a crime or act
9 shall be considered to be substantially related to the qualifications, functions or duties of a
10 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
11 perform the functions authorized by his or her license or in a manner inconsistent with the
12 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
13 those involving the following:

14 “(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting
15 the violation of or conspiring to violate any provision or term of the Act.

16 COST RECOVERY

17 10. Section 3753.5, subdivision (a) of the Code states:

18 "In any order issued in resolution of a disciplinary proceeding before the board, the
19 board or the administrative law judge may direct any practitioner or applicant found to have committed
20 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and
21 prosecution of the case."

22 11. Section 3753.7 of the Code states:

23 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
24 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,
25 and service fees."

26 12. Section 3753.1 of the Code states:

27 "(a) An administrative disciplinary decision imposing terms of probation may include,
28 among other things, a requirement that the licensee-probationer pay the monetary costs associated with

1 monitoring the probation. "

2 FIRST CAUSE FOR DISCIPLINE

3 (Conviction)

4 13. Respondent is subject to disciplinary action under sections 3750(d) and (g),
5 3752, 3752.5 and CCR 1399.370(a) [violating any provision of the Act] in that he was convicted
6 of violating Penal Code section 273.5(a), corporal injury to a spouse/cohabitant/child's parent, a
7 misdemeanor. The circumstances are as follows:

8 14. On or about May 3, 2005, at approximately 1951 hours (7:51 p.m.), Fresno
9 Police Officers Pack and Yeager were dispatched to investigate a call regarding a disturbance
10 between a male and female. The male was identified as respondent. When the officers arrived,
11 respondent was sitting on the couch in the apartment, holding a two year old girl. The officers
12 interviewed respondent, and he stated that he and his wife A. were arguing, and that he pushed
13 her. He claimed that A. then hit him in the mouth with a closed fist. He 'tapped' her on the chin
14 with his fist, to get her to stop hitting him. The officers interviewed A. She stated that she and
15 respondent were married but did not live together. They have two daughters, ages five and two.
16 The respondent and A. argued, and respondent grabbed A. by the throat and began choking her.
17 As the argument continued, respondent followed A. into the bathroom where he began choking
18 her again. She tried to get out of the apartment but respondent prevented her from leaving.
19 Throughout this time, A. stated that respondent was pushing her, poking her, hitting and pushing
20 her head, and cursing at her. She was able to exit the apartment by knocking out the window
21 screen and leaving through the window. The two children were present throughout the incident.
22 A. had scratches on both sides of her neck and the front of her neck consistent with being choked.
23 Respondent had an injury to his lip, and scratches on his back and side.

24 15. After talking with A., Officer Pack arrested respondent for violations of
25 Penal Code section 273.5, corporal injury to a spouse/cohabitant/child's parent, and Penal Code
26 section 236, false imprisonment. A. requested an Emergency Protective Order which was issued
27 at the scene, and served on respondent.

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1 16. On or about May 27, 2005, a First Amended Criminal Complaint was filed
2 in *People of the State of California vs. Randall Jeffery Najera*, case no. F05903761-5, in Superior
3 Court, Fresno County. Count 1 charged respondent with a violation of Penal Code section
4 273.5(a), corporal injury to a spouse/cohabitant/child's parent, a felony. Count 2 charged
5 respondent with a violation of Penal Code section 236, false imprisonment by violence, a
6 misdemeanor. Count 3 charged respondent with a violation of Penal Code section 273a(b), cruelty
7 to child, Jane Doe 2, a child of 5 years, by endangering health, a misdemeanor. Count 4 charged
8 respondent with a violation of Penal Code section 273 a(b), cruelty to child, Jane Doe 2, a child of
9 2 years, by endangering health, a misdemeanor.

10 17. On or about June 30 , 2005, the Court granted the People's motion to
11 amend Count 1 from a felony to a misdemeanor. Respondent entered a plea of no contest to
12 Count 1, Penal Code section 273.5(a), corporal injury to a spouse/cohabitant/child's parent, a
13 misdemeanor. The Court accepted the plea, and respondent was convicted. He was sentenced as
14 follows: three years formal probation, one day county jail, ordered to pay fines, enroll in a
15 Batterer's treatment program, a protective order was issued, and provision was made for a third
16 party contact to arrange child visitation.

17 18. Therefore, respondent's license is subject to discipline in that he was
18 convicted of violating Penal Code section 273.5(a), corporal injury to a spouse/cohabitant/child's
19 parent, a misdemeanor, which is substantially related to the practice of respiratory care and is a
20 violation of code sections 3750(d) and 3752, 3752.5, 3750(g) and CCR 1399.370(a).

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein
23 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

24 1. Revoking or suspending Respiratory Care Practitioner License Number
25 18352, issued to Randall J. Najera.

26 2. Ordering Randall J. Najera to pay the Respiratory Care Board the costs of
27 the investigation and enforcement of this case, and if placed on probation, the costs of probation
28 monitoring;

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3. Taking such other and further action as deemed necessary and proper.

DATED: October 20, 2005

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant